

June 1, 2000

D.T.E. 00-22-3

Complaint filed by Marcia MacMillan, pursuant to G.L. c. 93, § 108 et seq., with the Department of Telecommunications and Energy for a finding that her long distance telephone service was switched to Sprint Communications Company LP without authorization.

APPEARANCES: Marcia MacMillan

83 Herbert Road

Braintree, Massachusetts 02184

Complainant

PRO SE

Christopher D. Moore, Esq.

Sprint Communications Company LP

401 9th Street, Suite 400

Washington, D.C. 20004

Respondent

I. INTRODUCTION

On February 1, 2000, Marcia MacMillan ("Complainant"), pursuant to G.L. c. 93,

§ 108 et seq., filed a complaint with the Department of Telecommunications and Energy ("Department") alleging that Sprint Communications Company LP ("Sprint" or "Company") switched her long distance telephone service without authorization.

On May 17, 2000, pursuant to notice duly issued, the Department conducted an evidentiary hearing. Ms. MacMillan testified on her own behalf. The Company sponsored the testimony of Karen Borgstrom, a group manager of sales operations.

II. POSITIONS OF THE PARTIES

The Complainant testified that she learned of the switch in her long distance telephone provider from AT&T to Sprint in December 1999, when she received a monthly billing statement (Tr. at 8). Ms. MacMillan testified that she contacted Sprint and was informed that the switch in her service was authorized on November 18, 1999, and confirmed by a third party verification ("TPV") company (Exh. Complainant-2). The Complainant disputed the accuracy of this information and requested a copy of the verification recording, but, Ms. MacMillan stated that Sprint did not provide her with the recording (id.).

Sprint stated that it could not locate a copy of any TPV recording or provide the Department with any proof that Ms. MacMillan had authorized the switch in her long distance telephone service (Tr. at 19, 23). Sprint indicated that Ms. MacMillan's account was credited for \$88.97 representing all usage, monthly recurring fees, and switch fees billed (id. at 27).

III. STANDARD OF REVIEW

Pursuant to G.L. c. 93, § 109(a), a change in a customer's primary interexchange ("IXC") carrier shall be considered to have been authorized only if the IXC or local exchange carrier ("LEC") that initiated that change provides confirmation that the customer did authorize such change either through a signed LOA or oral confirmation of authorization obtained by a company registered with the department to provide third party verification services in the Commonwealth.

Massachusetts law provides that for a TPV to be valid, it must (1) identify the person that received the telemarketing call; (2) delineate the authority of that person to approve a

change in the IXC or LEC for a particular telephone line; and (3) identify the new IXC or LEC.

Pursuant to G.L. c. 93, § 110 (i), the Department shall hold a hearing to determine, based on our review of the TPV and any other information relevant to the change in long distance telephone service, whether the customer did authorize the carrier change.

IV. ANALYSIS AND FINDINGS

In accordance with G.L. c. 93, § 110(i), the Department conducted a hearing to determine whether the change in Ms. Macmillan's long distance carrier was authorized. Sprint could not provide the Department with any proof that Ms. MacMillan authorized the switch in her telephone service. Thus, the Department finds that Sprint was not legally authorized to provide Ms. MacMillan with long distance service.

The Department notes that Sprint already has credited the Complainant's account for charges she incurred while using Sprint's service, and the fees assessed to make the switch from her original IXC to Sprint. The Department directs Sprint to refund to Ms. MacMillan's previous long distance carrier all revenue that they would have received from the Complainant had the switch not taken place.⁽¹⁾

- ORDER

Accordingly, after notice, hearing, consideration, and determination that Sprint Communications Company LP switched Marcia MacMillan's long distance telephone service provider without authorization, it is hereby

ORDERED: That Sprint Communications Company LP shall comply with the directives contained in this Order; and it is

FURTHER ORDERED: That Sprint Communications Company LP shall submit to the Department within seven business days of the issuance of this order, an accounting of refunds made to the Complainant's previous interexchange carrier.

By Order of the Department,

James Connelly, Chairman

W. Robert Keating, Commissioner

Paul B. Vasington, Commissioner

Eugene J. Sullivan, Jr., Commissioner

Deirdre K. Manning, Commissioner

Appeal as to matters of law from any final decision, order or ruling of the Commission may be taken to the Supreme Judicial Court by an aggrieved party in interest by the filing of a written petition praying that the Order of the Commission be modified or set aside in whole or in part.

Such petition for appeal shall be filed with the Secretary of the Commission within twenty days after the date of service of the decision, order or ruling of the Commission, or within such further time as the Commission may allow upon request filed prior to the expiration of twenty days after the date of service of said decision, order or ruling. Within ten days after such petition has been filed, the appealing party shall enter the appeal in the Supreme Judicial Court sitting in Suffolk County by filing a copy thereof with the Clerk of said Court. (Sec. 5, Chapter 25, G.L. Ter. Ed., as most recently amended by Chapter 485 of the Acts of 1971).

1. An IXC determined by the Department to have intentionally, maliciously or fraudulently switched the service of more than 20 customers in a 12-month period, may be prohibited from selling telecommunications services in the Commonwealth for a period of up to one year. G.L. c. 93, § 112(b).